

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

NASSAU MARITIME HOLDINGS
DESIGNATED ACTIVITY COMPANY

CIVIL ACTION

VERSUS

NO. 2:20-CV-00355

M/V PACIFIC SKY, her engines, tackle,
appurtenances, etc., *in rem*, and PACIFIC SKY NAVIGATION LTD., *in personam*

JUDGE JAMES D. CAIN, JR.

MAGISTRATE JUDGE KAY

**VERIFIED COMPLAINT IN INTERVENTION TO ENFORCE MARITIME LIEN
AND DECLARATORY JUDGMENT RECOGNIZING ONGOING CREW AND OTHER
POST-ARREST EXPENSES AS CUSTODIA LEGIS EXPENSES**

NOW COMES Plaintiff in Intervention, Thome Ship Management PTE, Ltd. ("Thome"), and files its Verified Complaint in Intervention against the M/T PACIFIC SKY, her engines, tackle, and appurtenances, *in rem*, and Pacific Sky Navigation Ltd. ("Pacific Sky Navigation"), *in personam*, in a cause of action for foreclosure of maritime liens and for declaratory judgment seeking recognition and authorization by this Court of post-arrest ongoing crew wages, vendor fees, management fees, and other necessaries for the PACIFIC SKY as *custodia legis* expenses, and respectfully represents as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of 28 U.S.C. §1333, Rule 9(h) of the Federal Rules of Civil Procedure, and the Commercial Instruments and Federal Maritime Lien Act, 46 U.S.C. § 31301, et seq. ("CIMLA").

PARTIES

2. Thome is a corporation, or legal entity in the nature of a corporation, organized and existing pursuant to foreign law. Thome specializes in providing integrated

ship management services to the international shipping and offshore industries. Thome furnished crew and other necessities to the PACIFIC SKY and continues to pay crew wages and incur costs and fees on behalf of the vessel.

3. The M/T PACIFIC SKY (hereinafter the “the PACIFIC SKY”) is a Marshall Islands flagged tanker of approximately 250 meters in length, 44 meters in breadth, with gross tonnage of 62,856, and IMO Number 9408554. At all relevant times, the Vessel has been engaged in international commerce and owned by Pacific Sky Navigation.

4. At all material times, Defendant Pacific Sky Navigation is and was a Marshall Islands company with a registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

5. Plaintiff, Nassau Maritime Holdings Designated Activity Company, is and was an Irish company with its registered office at Fleming Court, Fleming’s Place, 3rd floor, Dublin 4, Ireland.

BACKGROUND

6. Thome specializes in providing integrated ship management services to the international shipping and offshore industries. Thome entered into a ship management agreement on January 23, 2009 with Pacific Sky Navigation to provide ship management services to the PACIFIC SKY.

7. On April 3, 2020, the PACIFIC SKY was arrested within the jurisdiction of this Court by Nassau Maritime Holdings Designated Activity Company (R. Doc. 12) and remains under arrest.

8. Through its ship management services, Thome furnished crew and other necessities to the PACIFIC SKY and continues to pay crew wages and incur costs and fees on behalf of the vessel.

9. Thome now seeks to intervene in this proceeding to enforce its maritime lien(s) for pre-arrest necessities and to seek recognition and authorization of expenses incurred *after* the arrest and any further expenses going forward as *custodia legis* expenses.

**FIRST CAUSE OF ACTION:
ENFORCEMENT OF MARITIME LIEN
FOR PRE-ARREST NECESSARIES**

10. Pursuant to its Agreement with Pacific Sky Navigation, Thome provided crew management to the PACIFIC SKY, including payment of the wages of each crewmember for their work on the PACIFIC SKY in the total principal amount of \$99,163.05. See Verification of Chris Edwards and included summary of amounts outstanding by category, attached as Exhibit A. See also summary of crew wages, attached as Exhibit B.

11. As part of its ship management services, Thome also arranged for and paid various vendors for other pre-arrest necessities in the amount of \$248,579. See Exhibit A. See also summary of invoices, attached as Exhibit C.

12. Thome also has purchase orders for services incurred pre-arrest in the amount of \$5,977.29. See Exhibit A. See also summary of open purchase orders, attached as Exhibit D.

13. Costs associated with pre-arrest port charges/mustering in the amount of \$5,500.00 have also been incurred. See Exhibit A.

14. The pre-arrest services provided by Thome to the PACIFIC SKY were necessary for the operations of the vessel in its ordinary trade, and have a fair market value in the total principal amount of \$359,219.29 (exclusive of interest, costs, and

attorney's fees), none of which has been paid despite amicable demand.¹

15. Pursuant to the general maritime law and CIMLA, Thome has one or more maritime liens against the PACIFIC SKY to secure its claim of \$359,219.29, plus pre-judgment and post-judgment interest, costs, attorney's fees, and collection expenses.

16. Thome is entitled to have this Court recognize its lien(s) against the PACIFIC SKY and is entitled to judgment against the vessel in the full amount of its claim, plus interest, costs, and attorney's fees.

17. Further, Thome is entitled to have the PACIFIC SKY seized and sold by the United States Marshal to satisfy its claims and said liens. Thome avers that it is entitled to priority lienholder status, inasmuch as a portion of its lien claim arises from payment of crew wages and Thome is subrogated thereto (subject to satisfaction of *custodia legis* expenses).

**SECOND CAUSE OF ACTION:
DECLARATORY JUDGMENT FOR RECOGNITION AND AUTHORIZATION OF
POST-ARREST AND ONGOING CREW WAGES AND OTHER EXPENSES AS
CUSTODIA LEGIS EXPENSES**

18. In addition to the pre-arrest necessities discussed above, and subsequent to the arrest of the PACIFIC SKY, Thome has paid \$440,758 in crew wages. See Exhibits A and B.

19. As part of its ongoing ship management services, Thome also arranged for and paid various vendors for necessities after the arrest of the PACIFIC SKY in the principal amount of \$147,334.28. See Exhibits A and C.

20. In connection with its ongoing ship management services, Thome also has

¹ Thome reserves the right to amend and supplement the amount of its claim.

purchase orders for services incurred subsequent to the arrest of the PACIFIC SKY in the amount of \$27,094.48. See Exhibits A and D.

21. Thome is also entitled to recover outstanding post-arrest ship management fees in the amount of \$44,600. See Exhibit A.

22. Costs associated with post-arrest port charges/mustering in the amount of \$6,617.00 have also been incurred. See Exhibit A.

23. Thome continues to incur amounts for crew wages, vendor fees, management fees, and other necessities for the PACIFIC SKY while it remains under arrest in the projected amount of \$4,961.00 per day. See Exhibit A.

24. Services or property advanced by Thome to preserve and maintain the PACIFIC SKY under seizure should be recognized and authorized by the Court as *custodia legis* expenses, reimbursable and payable to Thome as a priority from the proceeds of the sale of the PACIFIC SKY prior to the distribution of the remaining funds to claimants asserting liens or other claims against the vessel.

WHEREFORE, Thome Ship Management PTE, Ltd. prays for the following relief:

- A. That process be issued and served upon Pacific Sky Navigation the M/V PACIFIC SKY, her engines, tackle and apparel, in the form and manner prescribed by law, and that all persons claiming interest in said vessel may be cited to appear and answer the matters aforesaid;
- B. That, after due proceedings are had, judgment be entered against the M/V PACIFIC SKY and Pacific Sky Navigation and in favor of Thome Ship Management PTE, Ltd. in the sum of \$359,219, plus interest, costs and attorney's fees;
- C. That the M/V PACIFIC SKY, her engines, tackle and apparel, be seized, condemned and sold to pay such sums;
- E. That, after due proceedings are had, judgment be entered against the M/V PACIFIC SKY and Pacific Sky Navigation and in favor of Thome Ship Management PTE, Ltd. that all services or property advanced by Thome

Ship Management PTE, Ltd. to preserve and maintain the PACIFIC SKY under seizure in the amount of \$666,404 and continuing day to day be recognized and authorized by this Honorable Court and given priority as *custodia legis* expenses, reimbursable to Thome from the proceeds of the sale of the PACIFIC SKY prior to the distribution of the remaining funds to claimants asserting liens or other claims against the vessel; and

- D. For such other general and equitable relief as this Honorable Court deems proper.

Respectfully submitted:

s/ Trevor M. Cutaiar
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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2020, I electronically filed the foregoing with the Clerk of Court by using CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following non-CM/ECF participants: None.

s/ Trevor M. Cutaiar